

**State of Kansas**  
**Department of Health and Environment**

**Notice of Hearing on Proposed Administrative Regulations**

The Kansas Department of Health and Environment, Division of Health, Bureau of Epidemiology and Public Health Informatics (BEPHI), will conduct a public hearing at 1:30 p.m. Tuesday, February 25, 2014, in the Flint Hills Conference Room, third floor, room 3A of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed new regulation K.A.R. 28-1-23, pertaining to management of occupational exposures. This regulation is being proposed as both a temporary and a permanent regulation.

A summary of the proposed regulation and the estimated economic impact follows:

**Summary of Regulation:**

**K.A.R. 28-1-23.** The proposed regulation pertains to the management of occupational exposure to infectious or contagious diseases, blood, or other potentially infectious materials; defines terms used in the regulation; establishes notification requirements when a suspected occupational exposure occurs; and specifies the requirements for management of occupational exposures, including laboratory testing of a source person.

**Economic Impact:**

Cost to the agency: There is no additional cost to the agency. Costs, including staff time needed to develop electronic guidance documents and provide technical assistance to entities and persons affected by the regulation, will be absorbed in the current budget.

Cost to entities and persons affected by the proposed regulation: K.S.A. 2013 Supp. 65-128 expands the authority of the Kansas Department of Health and Environment to adopt regulations for management and testing for a broad array of specified infectious or contagious

diseases and source persons and to cover additional types of workers. The proposed regulation requires that, based on the nature of incidents of occupational exposure to infectious and contagious diseases or to blood or other potentially infectious materials, a source person be tested for certain infectious and contagious diseases. In practice, when an exposed person is a worker such as an emergency services employee, health care provider, law enforcement or corrections officer, or firefighter the employer typically pays for the appropriate tests. The costs for the tests can vary widely depending on which tests are needed. Costs to other governmental agencies or units: The employer typically pays for appropriate tests for source persons when a worker is exposed to blood or other potentially infectious materials. In circumstances in which an employee is the source person, the employer would likely pay for baseline testing of the exposed person, such as a patient in health care or in an emergency transport setting, as needed. Many of the employers that will be affected by this regulation include city fire departments, county emergency services agencies, and other similar agencies. The costs for tests vary widely depending on which tests are needed. For example, antibody tests for human immunodeficiency virus (HIV) or hepatitis B virus may be less than \$20, while complex molecular tests such as tests to detect viral nucleic acid (DNA or RNA) may exceed \$150.

The time period between publication of this notice and the scheduled hearing serves as the required public comment period of at least 60 days for the purpose of receiving written public comments on the proposed new regulation. At any time during the public comment period, which ends at 5:00 p.m. on the day of the hearing, any interested parties may submit written comments to D. Charles Hunt, MPH, State Epidemiologist and Director, BEPHI, Kansas Department of Health and Environment, Curtis State Office Bldg., 1000 S.W. Jackson, Suite

110, Topeka, 66612-2221, by fax at 785-296-8869, or by e-mail to [chunt@kdheks.gov](mailto:chunt@kdheks.gov). During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulation as well as an opportunity to submit their written comments. In order to give each individual an opportunity to present their views, it may be necessary for the hearing officer to request that each presenter limit any oral presentation to an appropriate time frame.

Complete copies of the proposed regulation and the corresponding economic impact statement may be obtained on the BEPHI website at [www.kdheks.gov/bepi](http://www.kdheks.gov/bepi) or by contacting D. Charles Hunt at the address above, 785-296-1415 or fax 785-296-8869.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and economic impact statement in an accessible format. Requests for accommodation should be made at least five working days in advance of the hearing by contacting D. Charles Hunt.

Robert Moser, M.D.

Secretary of Health and Environment

K.A.R. 28-1-23. Management of occupational exposures. (a) For the purpose of this regulation, each of the following terms shall have the meaning specified in this subsection:

(1) "Occupational exposure" means any occupational exposure, as defined in K.S.A. 65-116a(d) and amendments thereto, that occurs to any of the following under the conditions specified:

(A) Any individual providing medical or nursing services, clinical or forensic laboratory services, emergency medical services, or firefighting, law enforcement, or correctional services, whether for compensation or as a volunteer;

(B) any individual in training for certification, licensure, a position, or a job providing any services listed in paragraph (a)(1)(A); or

(C) any individual receiving services from an individual specified in paragraph (a)(1)(A) or (B).

(2) "Exposed person" means any individual who had an occupational exposure.

(3) "Source person" means any individual from whom an occupational exposure originated.

(4) "Infection control officer" means the individual on duty and designated to monitor and respond to occupational exposures by an entity providing medical or nursing services, clinical or forensic laboratory services, emergency medical services, or firefighting, law enforcement, or correctional services.

(b) Each exposed person specified in paragraph (a)(1)(A) or (B) shall inform the entity's infection control officer about the occupational exposure as soon as possible, but within four hours of the occupational exposure.

(c) The infection control officer shall determine whether the occupational exposure was sufficient to potentially transmit a pathogen or an infectious and contagious disease, considering current guidelines from the Kansas department of health and environment, the centers for disease control and prevention, and the United States public health service.

(d) If the infection control officer determines that the occupational exposure was sufficient to potentially transmit a pathogen or an infectious and contagious disease, the infection control officer shall direct that an appropriate specimen be obtained from the source person for testing.

(1) If the source person refuses to provide a specimen for testing, the infection control officer may submit an application to a court of competent jurisdiction for an order requiring the source person to submit an appropriate specimen for testing. The application shall include the following:

(A) An allegation that the source person has refused to provide an appropriate specimen for testing following an occupational exposure;

(B) the specific test or tests needed to be performed; and

(C) specification of whether and how frequently any additional tests may be required.

(2) If the source person has died and the infection control officer requests a specimen, the custodian of the source person's remains shall obtain and preserve an appropriate specimen from the source person for testing.

(e) If a person who has been transported to a health care facility is subsequently determined to be a source person of a pathogen or an infectious and contagious disease that can

be transmitted from person to person through the air or by exposure to respiratory droplets, the following notifications shall be required:

(1) Within four hours of the diagnosis, the treating health care provider shall notify the infection control officer of the health care facility of the presence of a source person.

(2) Within four hours of receiving notification from the treating health care provider, the infection control officer of the health care facility shall provide to the entity that transported the source person at least the following information:

(A) The name of the source person;

(B) the diagnosis; and

(C) the date and time of the source person was transported to the health care facility.

(3) Within four hours of receiving notification from the health care facility, the infection control officer of the entity that transported the source person shall notify all other entities whose personnel could have cared for or interacted with the source person in a manner that could transmit the pathogen or the infectious and contagious disease and shall provide at least the following information:

(A) The name of the source person;

(B) the diagnosis; and

(C) the date and time the source person was transported to the health care facility.

(f) The results of the infectious and contagious disease test or tests shall be disclosed to the exposed person, the infection control officer responsible for the exposed person, and the source person as soon as possible. To the extent feasible, the disclosure to the exposed person

shall not include the name or identity of the source person.

(g) If an infection control officer has determined that a person who is or has been in the care or custody of a health care or emergency services worker, law enforcement employee, or corrections officer has been exposed to an infectious and contagious disease, blood, or other potentially infectious materials by the worker, employee, or officer, the infection control officer shall advise the exposed person and recommend appropriate testing as soon as feasible.

(Authorized by and implementing K.S.A. 2013 Supp. 65-128; effective, T-\_\_\_\_\_,  
\_\_\_\_\_; effective P-\_\_\_\_\_.)

November 25, 2013

Kansas Department of Health and Environment  
Economic Impact Statement

Pursuant to the requirements of K.S.A. 2013 Supp. 77-416, Kansas Department of Health and Environment submits the following economic impact statement concerning a new regulation regarding management of occupational exposure to infectious diseases. The proposed regulation is needed to implement provisions of Senate Substitute for HB 2183 (L. 2013, ch. 112, sec. 2). This regulation is being promulgated as both a temporary and permanent regulation.

**1. Regulations to be implemented:**

K.A.R. 28-1-23. Management of occupational exposures.

**2. Brief description of each regulation and what is intended to be accomplished by adoption.**

K.A.R. 28-1-23: This regulation defines “exposed person,” “source person,” and “infection control officer” in the context of management of occupational exposure to infectious or contagious diseases, blood, or other potentially infectious materials; establishes notification requirements when a suspected occupational exposure occurs; and establishes the requirements for management of occupational exposures, including appropriate laboratory testing of source person.

**3. Are these regulations mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?**

Yes \_\_\_\_\_

No   X  

If yes, please explain.

**4. Do the proposed regulations exceed the requirements of applicable federal law?**

Yes   X  

No \_\_\_\_\_

**5. Description of Costs:**

**(a) Cost to the agency:**

There is no additional cost to the agency. Staff time will be needed to develop guidance documents and to provide technical assistance to persons affected by the regulation. Costs will be absorbed in the current budget.



**(b) Cost to persons who will bear the costs and those who will be affected (i.e., private citizens and consumers of the products or services) and are subject to the proposed rules and regulations or the enforcement:**

The proposed new K.A.R. 28-1-23 requires that, based on the nature of incidents of occupational exposure to infectious and contagious diseases or to blood or other potentially infectious materials, the source person be tested for certain infectious or contagious diseases. Previous state law provided only requirements for testing certain source persons for human immunodeficiency virus (HIV) in limited circumstances of occupational exposure. Senate Substitute for HB 2183 expanded the authority of the Kansas Department of Health and Environment to adopt administrative regulations for management and testing for a broader array of specified infectious or contagious diseases and source persons and to cover additional types of workers.

In practice, when the exposed person is a worker (e.g., emergency services employee, health care provider, etc.), the employer typically pays for the appropriate tests. The costs for tests can vary widely depending on which tests are needed.

**(c) Costs to other governmental agencies or units:**

As noted in 5(b) above, the employer typically pays for appropriate tests. Many of the employers that will be affected by this regulation include city fire departments, county emergency services agencies, and other similar agencies.

**6. Description of any less costly or less intrusive methods that were considered by the agency for the purpose of the rules and regulations and why such methods were rejected in favor of the proposed rules and regulations.**

This new regulation is proposed as required by Senate Substitute for HB 2183, which passed during the 2013 Kansas legislative session. Any requirements for testing of source persons as a result of an occupational exposure incident will be based on guidelines from the Kansas Department of Health and Environment, the U.S. Centers for Disease Control and Prevention, and the United States Public Health Service.

**7. Verification of economic impact statement with League of Kansas Municipalities, Kansas Association of Counties and the Kansas Association of School Boards.**

The above mentioned regulations were determined as appropriate for consultation as to the economic impact with the League of Kansas Municipalities and the Kansas Association of Counties, pursuant to K.S.A. 2013 Supp. 77-416.

Yes   X  

No           

**If yes:**

Date contacted and by what means (i.e., letter, FAX, etc.): The two organizations will be contacted electronically with attached copies of the regulation, economic impact statement and notice of hearing at the time the notice of hearing is published in the *Kansas Register*.

**Response and comments received by:**

League of Kansas Municipalities:

Kansas Association of Counties: